IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.8ll3 of 2004

Narendra A Bhalerao... petitioner
vs
State of Mah and ors.. respondents

Mr A.R Pitale for petitioner
Mr. P.I.Khemani AGP for State

CORAM:A.P.SHAH & S.C.DHARMADHIKARI JJ.
Dated l5.l0.2004

P.C:

Heard advocates.

l. The petitioner is an employee of the Maharashtra State Cooperative Tribal Development Corporation Ltd. The respondent no.l is the State of Maharashtra and respondent nos. 2 to 4 are the officials of the Maharashtra State Cooperative Tribal Development Corporation Ltd. The petitioner is challenging in the present petition the action of the Corporation in initiating departmental inquiry by issuing chargesheet dated l2.8.2004 against the petitioner for which the petitioner is facing criminal prosecution before the criminal court. The petitioner is also seeking a direction to the Corporation to differ the departmental

proceedings till the criminal court concludes the criminal prosecution. He is further seeking revocation of the suspension order and reinstatement in service.

2. The petitioner was working as Dy Regional Manager (incharge) being additional charge during the period from l.7.2003 to l5.l2.2003 at Shahapur sub-Regional Office of the Corporation. On 8.l2.2003 a complaint was lodged at Shahapur Police Station that the government rice which is supposed to have been sent to Gondiya for milling is being illegally sold to the local traders. On the basis of this complaint C.R. came to be registered being C.R No.2l7 of 2003 at Shahapur Police Station under sections 420, 407,409 and 34 of IPC. In connection with the C.R. the petitioner was arrested on l8.l2.2003 alongwith other accused and he was remanded to police custody and then magisterial custody and on 22.l2.2003 the petitioner came to be released on bail. The petitioner has been placed under suspension with effect from l9.l2.2003 as per rule 79(62) of the Maharashtra State Cooperative Tribal Development Corporation Employees, Rules. The chargesheet dated l2.8.2004 has been served on

the petitioner and departmental inquiry is initiated for the charges levelled in the chargesheet. One Mr. N.R.Naik, retired Project Officer is appointed as the Enquiry Officer and the petitioner has been asked to file reply to the chargesheet within l0 days if he so desires.

3. Mr. Pitale advocate for the petitioner submitted that holding of departmental inquiry was illegal in view of the fact that the offences have been registered in respect of the incident in question. It was submitted that if a departmental inquiry was to be held, that would result in disclosure of the defence of the petitioner in the criminal proceedings.

4. We are afraid the submission of the learned counsel cannot be accepted. In State of Rajasthan vs B K Meena and ors, l996(6) SCC 4l7 the Supreme Court laid down following principles of law:

> ".. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that

no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary i.e. for long period awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be and should not be, a matter of course".

The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his

> removal from service or a lesser punishment as the case may be. Whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different".
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> (emphasis supplied)

4. In M Paul Anthony v Bharat Gold Mines, l999(3) SCC 679, the Supreme Court laid down the following principles, after a review of the earlier decisions of the Court on the subject:

> "The conclusions which are deducible from various decisions of this Court referred too above are:
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> (i) Departmental proceedings and proceedings in a criminal case can proceed

simultaneously ask there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii)

above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest".

5. In Kendriya Vidyalaya Sanghathan and ors vs. T Srinivas, AIR 2004 SC 4l27, a two Judge Bench of the Supreme Court has considered the judgments in B K Meena and M Paul Anthony and summarised the legal position as follows:

"From the above, it is clear that the advisability, desirability or propriety, as

the case may be, in regard to a departmental inquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgement also lays down that stay of departmental proceedings cannot be and should not be a matter of course.

"....This court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings in question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, ask the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, hat sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing

> the enquiry and trial in both the cases are distinct and different . On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the Tribunal fell in error in staying the disciplinary proceedings".

6. In the light of the position of law as elaborated in the judgment of the Supreme Court and having regard to the facts and circumstances of the present case we are of the opinion that this is not a fit case for staying the departmental inquiry pending the outcome of the criminal proceedings. The present case does not raise complicated questions of law and fact as enunciated by the Supreme Court so as to warrant the staying of the departmental proceedings. The criminal proceedings are still in their incipient stage.Having regard to the fact that the petitioner is an employee of a public undertaking, it is in the interest of justice that the disciplinary proceedings are concluded without any stay. Petition is, therefore, dismissed.